



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 7, 1998

Mr. David Méndez
Bickerstaff, Heath, Smiley, Pollan,
Kever & McDaniel, L.L.P.
1700 Frost Bank Plaza
816 Congress Avenue
Austin, Texas 78701-2443

OR98-0894

Dear Mr. Méndez:

You ask this office to reconsider our ruling in Open Records Letter No. 98-0430 (1998). Your request for reconsideration was assigned ID# 114736.

The Austin Independent School District (the "district"), which you represent, received a request for information from Mr. Robert D. Hall under the Open Records Act. In Open Records Letter No. 98-0430, this office concluded in part, based on information in the record, that the district could not withhold the requested information under section 552.103 of the Government Code because the district had failed to timely request a ruling from this office. In your request for reconsideration, you explain that November 26, 27, and 28, 1997, were school holidays for the Austin Independent School District. You did not explain that fact to this office in your original request for a ruling. You further contend that, not counting those days, the county's request for a ruling was timely because it was submitted within ten business days of receipt of the first request for the information. *See* Gov't Code § 552.301.

The request for information was submitted to the county on November 20, 1997. Your request for a decision from this office is dated December 9, 1997. Taking into consideration the additional information you have provided regarding district holidays, we agree with your assertions that the district timely submitted the request for a ruling to this office. We will, therefore, address the applicability of section 552.103 to the requested information.

Section 552.103 excepts from required public disclosure information relating to litigation "to which the state or political subdivision is or may be a party." To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial

proceeding. Open Records Decision No. 551 (1990). The district has received a demand letter from an attorney that threatens litigation if the district does not comply with her client's demands. Furthermore, you have explained how the requested information relates to the anticipated litigation. Thus, in this instance, you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a). The requested records may therefore be withheld.

In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue. Absent special circumstances, once information has been obtained by all parties to the litigation no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Open Records Letter No. 98-0430 (1998) is overruled to the extent it conflicts with this ruling. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Deputy Chief
Open Records Division

LRD/rho

Ref.: ID# 114736

Enclosures: Submitted documents

cc: Mr. Robert D. Hall
1721 Harliquin Run
Austin, Texas 78758
(w/o enclosures)